

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BARBARA A. NEZELEK,

Plaintiff,

v.

**3:05-CV-1481
(FJS/DEP)**

**MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,**

Defendant.

APPEARANCES

OF COUNSEL

HINMAN HOWARD & KATTELL LLP

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**OFFICE OF THE UNITED
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Attorneys for Defendant

SCULLIN, Senior Judge

ORDER

In a Report and Recommendation dated February 14, 2008, Magistrate Judge Peebles recommended that this Court grant Defendant's motion for judgment on the pleadings, affirm the Commissioner's decision, and dismiss the complaint. *See* Dkt. No. 8. Magistrate Judge Peebles

found that, although Plaintiff has residual effects due to knee conditions, the evidence supports a finding that she is able to perform sedentary work and that, because Plaintiff's past relevant work is sedentary in nature, the Administrative Law Judge's ("ALJ") finding that she can perform the exertional requirements of her past relevant work as a social worker is supported by substantial evidence. *See id.* at 22.

Currently before the Court are Plaintiff's objections to Magistrate Judge Peebles' Report and Recommendation: (1) the ALJ did not give Plaintiff's treating physician controlling weight in favor of an agency consultant; (2) the ALJ incorrectly found that Plaintiff could perform sedentary work; and (3) the ALJ improperly found that Plaintiff could perform her past relevant work. *See* Dkt. No. 9.¹

With respect to all of Plaintiff's objections, the Court concludes that Magistrate Judge Peebles applied the appropriate law and correctly found that substantial evidence supported the ALJ's findings. Therefore, the Court finds that Plaintiff's objections on these issues are without merit for the reasons stated in the Report and Recommendation.

Accordingly, after carefully considering Magistrate Judge Peebles' Report and Recommendation, Plaintiff's objections thereto, as well as the applicable law, and for the reasons stated in Magistrate Judge Peebles' Report and Recommendation, the Court hereby

ORDERS that Magistrate Judge Peebles' February 14, 2008 Report and Recommendation is **ADOPTED** in its entirety; and the Court further

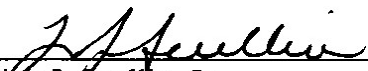
¹ Plaintiff presented all of these issues to Magistrate Judge Peebles, who thoroughly discussed them in his Report and Recommendation.

ORDERS that Defendant's motion for judgment on the pleadings is **GRANTED**, the Commissioner's decision is **AFFIRMED**, and Plaintiff's complaint is **DISMISSED**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment for Defendant and close this case.

IT IS SO ORDERED.

Dated: May 6, 2009
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge